

House Bill 322 (COMMITTEE SUBSTITUTE)

By: Representatives Moraitakis of the 42nd, Post 4, Campbell of the 39th, Ralston of the 6th, Stokes of the 72nd, and Oliver of the 56th, Post 2

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated,
2 relating to appellate practice, so as to change certain provisions relating to judgments and
3 rulings deemed directly appealable, procedure for review of judgments, orders, or decisions
4 not subject to direct appeal; to change certain provisions relating to cases requiring an
5 application for appeal, procedure, and jurisdiction; to change certain provisions relating to
6 cases requiring an application for appeal; to amend Code Section 9-11-56 of the Official
7 Code of Georgia Annotated, relating to summary judgment, so as to conform it to the
8 changes made in Title 5; to provide for related matters; to provide an effective date; to
9 provide for applicability; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 2 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated, relating to
13 appellate practice, is amended by striking subsection (a) of Code Section 5-6-34, relating to
14 judgments and rulings deemed directly appealable, procedure for review of judgments,
15 orders, or decisions not subject to direct appeal, scope of review, and hearings in criminal
16 cases involving a capital offense for which death penalty is sought, and inserting in lieu
17 thereof the following:

18 "(a) Appeals may be taken to the Supreme Court and the Court of Appeals from the
19 following judgments and rulings of the superior courts, the constitutional city courts, and
20 such other courts or tribunals from which appeals are authorized by the Constitution and
21 laws of this state:

- 22 (1) All final judgments, that is to say, where the case is no longer pending in the court
23 below, except as provided in Code Section 5-6-35;
- 24 (2) All judgments involving applications for discharge in bail trover and contempt cases;
- 25 (3) All judgments or orders directing that an accounting be had;

1 (4) All judgments or orders granting or refusing applications for receivers or for
2 interlocutory or final injunctions;

3 (5) All judgments or orders granting or refusing applications for attachment against
4 fraudulent debtors;

5 (5.1) Any ruling on a motion which would be dispositive if granted with respect to a
6 defense that the action is barred by Code Section 16-11-184;

7 (6) All judgments or orders granting or refusing to grant mandamus or any other
8 extraordinary remedy, except with respect to temporary restraining orders;

9 (7) All judgments or orders refusing applications for dissolution of corporations created
10 by the superior courts; ~~and~~

11 (8) All judgments or orders sustaining motions to dismiss a caveat to the probate of a
12 will;

13 (9) All orders denying nonparties engaged in news gathering the privilege pursuant to
14 Code Section 24-9-30;

15 (10) All orders in criminal cases as provided in Code Sections 5-7-1 and 5-7-2;

16 (11) All declaratory judgments as provided in Code Section 9-4-2;

17 (12) All orders granting motions for summary judgment as provided in subsection (h) of
18 Code Section 9-11-56; and

19 (13) All other orders and judgments deemed subject to immediate review by applicable
20 law."

21 SECTION 2.

22 Said article is further amended by striking subsections (a) and (j) of Code Section 5-6-35,
23 relating to cases requiring application for appeal, contents, filing, and service of application,
24 exhibits, response by opposing party, issuance of appellate court order, procedure,
25 supersedeas, and jurisdiction of appeal, and inserting in their places, respectively, the
26 following:

27 "(a) Appeals in the following cases shall be taken as provided in this Code section:

28 (1) Appeals from decisions of the superior courts reviewing decisions of the State Board
29 of Workers' Compensation, the State Board of Education, auditors, state and local
30 administrative agencies, and lower courts by certiorari or de novo proceedings; provided,
31 however, that this provision shall not apply to decisions of the Public Service
32 Commission and probate courts and to cases involving ad valorem taxes and
33 condemnations;

34 (2) Appeals from judgments or orders in divorce, alimony, child custody, and other
35 domestic relations cases including, but not limited to, granting or refusing a divorce or
36 temporary or permanent alimony, awarding or refusing to change child custody, or

1 holding or declining to hold persons in contempt of such alimony or child custody
2 judgment or orders;

3 (3) Appeals from cases involving distress or dispossessory warrants in which the only
4 issue to be resolved is the amount of rent due and such amount is \$2,500.00 or less;

5 (4) Appeals from cases involving garnishment or attachment, except as provided in
6 paragraph (5) of subsection (a) of Code Section 5-6-34;

7 (5) Appeals from orders revoking probation;

8 (6) Appeals in all actions for damages in which the judgment is \$10,000.00 or less;

9 (7) Appeals, when separate from an original appeal, from the denial of an extraordinary
10 motion for new trial;

11 (8) Appeals from orders under subsection (d) of Code Section 9-11-60 denying a motion
12 to set aside a judgment ~~or under subsection (e) of Code Section 9-11-60 denying relief~~
13 ~~upon a complaint in equity to set aside a judgment;~~

14 (9) Appeals from orders granting or denying temporary restraining orders;

15 (10) Appeals from awards of attorney's fees or expenses of litigation under Code Section
16 9-15-14; ~~and~~

17 (11) Appeals from decisions of the state courts reviewing decisions of the magistrate
18 courts by de novo proceedings so long as the subject matter is not otherwise subject to
19 a right of direct appeal; and

20 (12) Appeals of all actions filed by prisoners pursuant to Code Section 42-12-8."

21 "~~(j) When an appeal in a case enumerated in subsection (a) of Code Section 5-6-34, but not~~
22 ~~in subsection (a) of this Code section, subject to direct appeal~~ is initiated by filing an
23 otherwise timely application for permission to appeal pursuant to subsection (b) of this
24 Code section or subsection (b) of Code Section 5-6-34 without also filing a timely notice
25 of appeal, the appellate court shall have jurisdiction to decide the case and shall grant the
26 application. Thereafter the appeal shall proceed as provided in subsection (g) of this Code
27 section."

28 SECTION 3.

29 Said article is amended further by striking Code Section 5-6-39, relating to extensions of
30 time for filing notice of appeal, notice of cross appeal, transcript of evidence, designation of
31 record and other similar motions, and inserting in lieu thereof the following:

32 "5-6-39.

33 (a) Any judge of the trial court or any justice or judge of the appellate court to which the
34 appeal is to be taken may, in his or her discretion, and without motion or notice to the other
35 party, grant extensions of time for the filing of:

36 (1) Notice of appeal;

1 (2) Notice of cross appeal;

2 (3) Transcript of the evidence and proceedings on appeal or in any other instance where
3 filing of the transcript is required or permitted by law;

4 (4) Designation of record referred to under Code Section 5-6-42; and

5 (5) Any other similar motion, proceeding, or paper for which a filing time is prescribed.

6 (b) Any justice or judge of the appellate court to which the appeal is taken may, in his or
7 her discretion, and without motion or notice to the other party, grant extensions of time for
8 the filing of application for permission to appeal pursuant to subsection (b) of Code Section
9 5-6-35.

10 ~~(b)~~(c) No extension of time shall be granted for the filing of motions for new trial or for
11 judgment notwithstanding the verdict.

12 ~~(c)~~(d) Only one extension of time shall be granted for filing of a notice of appeal and a
13 notice of cross appeal, and the extension shall not exceed the time otherwise allowed for
14 the filing of the notices initially.

15 ~~(d)~~(e) Any application to any court, justice, or judge for an extension must be made before
16 expiration of the period for filing as originally prescribed or as extended by a permissible
17 previous order. The order granting an extension of time shall be promptly filed with the
18 clerk of the trial court, and the party securing it shall serve copies thereof on all other
19 parties in the manner prescribed by Code Section 5-6-32."

20 **SECTION 4.**

21 Code Section 9-11-56 of the Official Code of Georgia Annotated, relating to summary
22 judgment, is amended by striking subsection (h) and inserting in lieu thereof the following:

23 "(h) *Appeal.* An order granting summary judgment on any issue or as to any party shall be
24 subject to review by appeal. An order denying summary judgment shall be subject to
25 review by ~~direct~~ appeal in accordance with subsection (b) of Code Section 5-6-34."

26 **SECTION 5.**

27 This Act shall become effective upon its approval by the Governor or upon its becoming law
28 without such approval.

29 **SECTION 6.**

30 This Act shall apply to any case pending on or brought after the effective date of this Act.

31 **SECTION 7.**

32 All laws and parts of laws in conflict with this Act are repealed.